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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/550,920	08/28/2006	Andreas Basteck	WW042USU	1395
27623 7590 01/13/2010 OHLANDT, GREELEY, RUGGIERO & PERLE, LLP ONE LANDMARK SQUARE, 10TH FLOOR STAMFORD, CT 06901				
EXAMINER LE, DAVID D				
ART UNIT 3655		PAPER NUMBER		
MAIL DATE 01/13/2010		DELIVERY MODE PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/550,920

**Applicant(s)**

BASTECK, ANDREAS

**Examiner**

DAVID D. LE

**Art Unit**

3655

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 October 2009.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 11-20 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 11-20 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 28 September 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO/GS/US)  
Paper No(s)/Mail Date \_\_\_\_\_  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. This is the third Office action on the merits of Application No. 10/550,920, filed on 28 August 2006. Claims 11-20 are pending.

### **Documents**

2. The following documents have been received and filed as part of the patent application:
- Information Disclosure Statement, received on 09/28/05
  - Copy of Foreign Priority Document, received on 09/28/06
  - Declaration and Power of Attorney, received on 08/28/06
  - Terminal Disclaimer, received on 03/02/09

### ***Claim Objections***

3. Claim 11 is objected to because of the following informalities:
- Line 17, “or” should be --and--.
  - Line 17, “a TRILOK converter” should be --a TRILOK™ converter--.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 11-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 11 recites the limitation “a TRILOK™ converter”. It is unclear which specific model year of the TRILOK™ converter that the claimed limitations are referring to.

### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 11-16 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 03/076829 A1 (hereinafter referred to as WO'829) in view of European Patent Application No. 0 635 639 A1 (hereinafter referred to as EU'639).

#### **Note:**

To facilitate a better understanding as well as greater accuracy in explaining the following claim rejections, the examiner will refer to the equivalent English version of the WO'829, U. S. Patent 7,297,084 to Kimura et al. (hereinafter referred to as Kimura).

#### **Claims 11-16 and 20:**

***Kimura/WO'829*** (i.e., Fig. 6; column 7, line 57 – column 8, line 54) discloses a drive train comprising:

- A power-split transmission (i.e., Fig. 6, element 30B) for receipt of power from a single source (i.e., Fig. 6, element A1), the power-split transmission having an input shaft (i.e., Fig. 6, element 15b), at least one first power branch (i.e., Fig. 6, being combination of elements 4b and 37b), and at least one second power branch (i.e., Fig. 6, element 9b);
- Wherein the first power branch drives a rotary machine (i.e. Fig. 6, element A2);
- A hydrodynamic circuit (i.e., Fig. 6, element 20) disposed at an output end of the power-split transmission;
- Wherein the hydrodynamic circuit connects the first power branch and the second power branch and can be configured to control power flow so that the rotary machine (A2) is driven at a speed that is substantially constant;
- Wherein the hydrodynamic circuit is a hydrodynamic coupling (i.e., column 8, line 8);
- Wherein the hydrodynamic coupling (20) includes a turbine wheel (i.e., Fig. 6, element 24) and a pump impeller (i.e., Fig. 6, element 26) connected to a rapidly spinning shaft (i.e., Fig. 6, being the combination of elements 4b and 37b);
- Wherein the rapidly spinning shaft is an output shaft of the drive train;
- Wherein the rapidly spinning shaft is part of the first power branch (i.e., Fig. 6);
- A second transmission (i.e., Fig. 6, being the gear element that is mounted on the shaft element 9b and the gear element that is mounted on the carrier element 13b) connected in series with the power-split transmission;

- Wherein the second transmission is arranged in the second power branch and can be configured to increase a speed at which the hydrodynamic circuit is operated;
- Wherein an output speed can be held constant with a maximum deviation of  $\pm 10$ ,  $\pm 5$  or  $\pm 1$  of a specific value;
- Wherein power input occurs via a ring gear (i.e., Fig. 6, element 35b);
- Wherein the first power branch is operably connected to a sun wheel (i.e., Fig. 6, element 31b); and
- Wherein the second power branch is coupled to a planetary gear carrier (i.e., Fig. 6, element 13b).

*Kimura/WO'829* lacks:

- Wherein the first power branch drives an electric generator.

*EU'639* (i.e., Figs. 1 and 2; column 5, line 11 – column 9, line 45), on the other hand, discloses a wind turbine transmission comprising:

- A wind turbine blade (i.e., Fig. 1, element 6);
- A planetary transmission (i.e., Figs. 1 and 2, element 8);
- A converter (i.e., Fig. 1, element 48);
- An electric generator (i.e., Fig. 1, element 46); and
- Wherein the wind turbine transmission controls the power flow so that the electric generator is driven at a substantially constant speed (i.e., column 7, line 45 – column 9, line 12).

Since all the claimed elements were known in the prior art, one skilled in the art could have substituted the rotary machine of Kimura/WO'829 with an electric generator of EU'639 such that the electric generator is driven at a substantially constant speed, as claimed, by known methods with no change in their respective functions, and the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention.

It would also have been obvious to one having ordinary skill in the art at the time the invention was made to optimize an output speed, such that it is held constant with a maximum deviation of  $\pm 10$ ,  $\pm 5$  or  $\pm 1$  of a specific value, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

8. Claims 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 03/076829 A1 (hereinafter referred to as WO'829) in view of European Patent Application No. 0 635 639 A1 (hereinafter referred to as EU'639) and further in view of U. S. Patent No. 3,078,739 to H. Weinrich (hereinafter referred to as Weinrich).

Note:

To facilitate a better understanding as well as greater accuracy in explaining the following claim rejections, the examiner will once again refer to the equivalent English version of the WO'829, U. S. Patent 7,297,084 to Kimura et al. (hereinafter referred to as Kimura/WO'829).

Claims 17-19:

***Kimura/WO'829 in view of EU'639*** discloses limitations as set forth above.

Regarding claims 17-19, Kimura/WO'829 lacks:

- A stator having adjustable vanes;
- Wherein power input occurs via a planetary gear carrier; and
- Wherein the second power branch provides feedback to a ring gear.

***Weinrich*** (i.e., Fig. 1; column 3, line 49 – column 8, line 17), on the other hand, teaches a transmission comprising:

- A first planetary transmission (i.e., Fig. 1);
- A second planetary transmission (i.e., Fig. 1);
- A hydrodynamic converter (i.e., Fig. 1);
- Wherein the first planetary transmission is a power-split transmission having a first power branch (i.e., Fig. 1);
- Wherein the second planetary transmission is connected in series with the power-split transmission (i.e., Fig. 1);
- Wherein the hydrodynamic converter includes a pump (i.e., Fig. 1, element 108), a stator (i.e., Fig. 1, element 117), and a turbine wheel (i.e., Fig. 1, element 110);
- Wherein power input occurs via a planetary gear carrier (i.e., Fig. 1, element 102);
- Wherein the first power branch is operably connected to a sun wheel (i.e., Fig. 1, element 106);



- Wherein the second power branch provides feedback to a ring gear (i.e., Fig. 1, elements 105 and 116).

Since all the claimed elements were known in the prior art, one skilled in the art could have substituted the power-split transmission and the hydrodynamic coupling of Kimura/WO'829 with the power-split transmission and the hydrodynamic converter of Weinrich such that power input occurs via a planetary gear carrier, the second power branch provides feedback to a ring gear, and the hydrodynamic converter includes a stator, as claimed, by known methods with no change in their respective functions, and the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention.

9. Applicant cannot rely upon the foreign priority papers to overcome the above rejections because a translation of said papers has not been made of record in accordance with 37 CFR 1.55. See MPEP § 201.15.

***Response to Arguments***

10. Applicant's arguments with respect to claims 11-20 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DAVID D. LE whose telephone number is (571)272-7092. The examiner can normally be reached on Mon-Fri (0900-1730).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David D. Le can be reached on 571-272-7092. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/David D. Le/  
Primary Examiner, Art Unit 3655  
01/12/2010

ddl